

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CYNTHIA E. FOXWORTH,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

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CIVIL ACTION

NO. 05-1683

MEMORANDUM & ORDER

YOHN, J.

August ____, 2004

This medical malpractice suit, brought under the Federal Tort Claims Act, 28 U.S.C. § 2671, *et seq.*, (“FTCA”) arises out of an operation performed at the now-defunct Naval Regional Medical Center in Philadelphia (“Medical Center”). *Pro se* plaintiff Cythnia Foxworth alleges that she contracted the hepatitis C virus during a procedure at the Medical Center as a result of the negligence of certain employees of the United States. Presently before the court is the government’s motion to transfer the case to the United States District Court for the Eastern District of Virginia pursuant to 28 U.S.C. § 1404(a). For the reasons set forth below, I will grant the motion.

I. BACKGROUND

Foxworth underwent surgery at the Medical Center on January 8, 1976 for an undisclosed illness. (Compl. at ¶ 2.) During the course of the surgery, Foxworth received a blood transfusion. As a result of the transfusion, Foxworth was allegedly infected with the hepatitis C virus. (*Id.* at ¶ 3.)

The Medical Center was closed in 1990, and the records of its patients have been relocated to a storage facility in St. Louis, Missouri. (Def.'s Mem. of Law in Supp. of Mot. to Transfer at 2.)

Foxworth, who resides in Richmond, Virginia, first learned of her condition in July 2002, when she was diagnosed with chronic hepatitis C at the Virginia Commonwealth University Health System in Richmond. (Ex. 1 to Def.'s Mot. to Transfer.) Foxworth was subsequently referred to the Hepatology Department at the Hunter Holmes McGuire Medical Center in Richmond, where she currently receives treatment. (*Id.*) Foxworth admits that all of the medical professionals involved in her treatment for hepatitis are located in Richmond. (Pl.'s Mem. of Law in Opp. to Def.'s Mot. to Transfer at 4.)

On April 13, 2005, Foxworth filed this suit under the FTCA, alleging one count of negligence. On June 29, 2005, the government filed the instant motion, which is now ripe for disposition.

II. DISCUSSION

A. Proper Venue

A court may not transfer a lawsuit to a forum where venue is improper. *See* 28 U.S.C. § 1404(a). Hence, before I may consider the merits of the government's motion, I must determine whether venue is proper in Eastern District of Virginia. In a civil action on a tort claim against the United States, venue is proper in the judicial district where the plaintiff resides, or in the

district where the act or omission giving rise to the claim occurred. 28 U.S.C. § 1402(b).¹ Here, venue is proper in the Eastern District of Virginia, where Foxworth currently resides, as well as this district, where the allegedly negligent operation took place.

B. Transfer of Venue

Under 28 U.S.C. § 1404(a), a court may “may transfer any civil action to any other district or division where it might have been brought” “for the convenience of the parties and witnesses” or “in the interest of justice”. This decision lies within the discretion of the trial court. *See Shuttle v. ARMCO Steel Corp.*, 431 F.2d 22, 25 (3d Cir. 1970). Courts must exercise that discretion in light of the strong presumption in favor of the plaintiff’s choice of forum. *See id.* at 25 (“[A] plaintiff’s choice of a proper forum is a paramount consideration in any determination of a transfer request, and that choice ‘should not be lightly disturbed.’”) (citation omitted). Consequently, the defendant has the burden of “establish[ing] that a balancing of proper interests weigh in favor of the transfer.” *Id.*

Courts consider a list of private and public interests when deciding a motion to transfer venue. The private interests include: (1) “the plaintiff’s forum preference as manifested in the original choice,” (2) “the defendant’s preference,” (3) “whether the claim arose elsewhere,” (4) “the convenience of the parties as indicated by their relative physical and financial condition,” (5) “the convenience of the witnesses,” and (6) “the location of books and records”. *Jumara v. State*

¹Foxworth mistakenly relies on 28 U.S.C. § 1402(c), which governs civil actions against the United States that arise under the Internal Revenue Code. (Pl.’s Mem. of Law in Opp. to Def.’s Mot. to Transfer at 5.) Under this section, unlike § 1402(b), venue is not proper in the judicial district where the plaintiff resides. Here, because Foxworth seeks to recover damages under a tort theory (negligence), her claim is governed by § 1402(b), and venue is proper in the Eastern District of Virginia, where Foxworth resides.

Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995).

Courts also consider the following public interests: (1) “the enforceability of the judgment,” (2) “practical considerations that could make the trial easy, expeditious, or inexpensive,” (3) “the relative administrative difficulty in the two fora resulting from court congestion,” (4) “the local interest in deciding local controversies at home,” (5) “the public policies of the fora,” and (6) “the familiarity of the trial judge with the applicable state law in diversity cases.” *Id.* at 879–80.

1. *Private interests*

The government observes that although courts generally give deference to a plaintiff’s forum choice, that choice merits less deference “‘when the plaintiff’s choice of forum is not the plaintiff’s residence.’” *Rowles v. Hammermill Paper Co.*, 689 F. Supp. 494, 495–96 (E.D. Pa. 1988) (citation omitted); *cf Lony v. E.I. Du Pont de Nemours & Co.*, 935 F.2d 604, 609 (3d Cir. 1991) (“[A] foreign plaintiff’s choice may deserve less deference because it may be less reasonable to assume that a venue which is not the plaintiff’s home forum is convenient.”) (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255 (1981)). Here, Foxworth has elected to file suit where the allegedly wrongful conduct giving rise to the suit occurred, rather than her home forum. She made this choice despite the fact that the hospital where her claim arose has been closed for approximately fifteen years. Additionally, Foxworth has offered no explanation why she prefers to litigate the case here. For these reasons, Foxworth’s forum choice is entitled to less deference than usual.

The fact that Foxworth’s claim arose in Pennsylvania arguably weighs against transfer. However, the strength of this factor is considerably tempered by the fact that the hospital where

the claim arose has been closed for approximately fifteen years, and its records have been moved outside of Pennsylvania.

Because Foxworth is a resident of Richmond, it would seem that “the convenience of the parties as indicated by their relative physical and financial condition” would weigh in favor of transfer. Foxworth would presumably expend considerably less resources if she litigated the case in her hometown. Nonetheless, Foxworth opposes the government’s motion, although she has failed to provide any logical explanation why it would be more convenient for her to litigate the case here.

The “convenience of witnesses,” which some courts have labeled “[t]he most critical factor . . . under 28 U.S.C. § 1404(a),” *Yun Ja Chung v. Chrysler Corp.*, 903 F. Supp. 160, 164 (D.D.C. 1995) (citation omitted), strongly weighs in favor of transfer. The only potential witnesses that either party has identified are Foxworth’s current treating physicians, who are all located in the Eastern District of Virginia.² Foxworth’s prior pleadings suggest that she intends to rely on the testimony of these witnesses to establish the appropriate standard of care, as well as her damages.³ The government does not contend that these witnesses would be unavailable to

²The government contends that the original doctors involved in Foxworth’s surgery and blood transfusion are located “in the south or near the Eastern District of Virginia.” (Def.’s Mem. of Law in Supp. of Mot. To Transfer at 4–5.) However, it has failed to come forward with any evidence in support of this contention.

³Foxworth claims that she does not intend to rely on any witnesses to prove the merits of her case, and instead, she will base her case on her so called “pre-trial memorandum,” which cites various articles from the internet. (Pl.’s Mem. of Law in Opp. to Def.’s Mot. to Transfer at 4.) Foxworth should be aware that in almost every medical malpractice case, expert testimony is required to establish the relevant standard of care and whether the defendants complied with that standard. *See Chandler v. Cook*, 265 A.2d 794, 796 (Pa. 1970) (“We have often held that, in malpractice cases . . . a jury will not be permitted to find negligence without expert testimony to establish variance from accepted medical practice.”) (citation omitted).

testify in Pennsylvania, but it does observe that both parties will incur substantial costs to house and transport these witnesses if the case is litigated in this district as opposed to the Eastern District of Virginia. Further, it would undoubtedly be more convenient and less costly for the witnesses themselves to testify in Virginia, where they work, and presumably live. Foxworth has failed to address the cost or convenience of these witnesses, but there is little question that her physicians will be more inclined to testify on her behalf in the district where they work.

The “location of records” carries little weight in this case because the Medical Center’s records have been moved to St. Louis, and thus they will have to be moved regardless of whether the case remains here, or is transferred to Virginia.

In sum, because Foxworth does not reside this district, because all of her potential witness that have been identified are located in Virginia, because Foxworth has failed to come forward with any logical reason why transfer is inappropriate, and because of the government’s preference, I conclude that the private interests weigh in favor of transfer.

2. Public interests

The public interests also favor transfer. Neither party has introduced any evidence regarding “the enforceability of the judgment,” or docket congestion in the two districts. As I described above, “practical considerations,” such as cost and convenience, suggest that the Eastern District of Virginia is the most appropriate forum for this litigation. Additionally, Virginia arguably has a stronger interest in deciding this conflict than does Pennsylvania. Although the alleged malpractice occurred in Pennsylvania, its interest in deciding this controversy is weak because the accident occurred more than twenty-nine years ago and hospital where it occurred has been closed for fifteen years. In contrast, Foxworth resides in Virginia, and

it is well established that a state “has a manifest interest in providing effective means of redress for its residents.” *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223 (1957). Finally, although Pennsylvania malpractice law governs this case, this fact does not counsel against transfer. Because the alleged malpractice occurred in Pennsylvania, Pennsylvania law will govern this suit pursuant to 28 U.S.C. § 2674.⁴ Nonetheless, because this case will only involve the application of garden-variety negligence law, a trial judge in Virginia can very quickly become as familiar with the applicable law as this court would be. *See Frankenberg v. Superior Distribs.*, 961 F. Supp. 1560, 1565 (S.D. Ala. 1997) (observing that “whether a court is required to apply the laws of Alabama or Mississippi probably will not make much difference” because “[t]he action involves familiar tort and contract claims which are not considered complicated issues.”). Consequently, the source of law does not weigh against transfer.

III. CONCLUSION

For the reasons explained above, the private and the public factors weigh in favor of transfer, and I will grant the government’s motion to transfer the case to the United States District Court for the Eastern District of Virginia. An appropriate order follows.

⁴This section of the FTCA provides that the United States is liable “in the same manner and to the same extent as a private individual under like circumstances”

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ORDER

AND NOW, this _____ day of August, 2005, upon consideration of the government's motion to transfer venue (Doc. No. 11), and plaintiff Cynthia Foxworth's opposition thereto (Doc. No. 12), it is hereby ORDERED that the motion is GRANTED and the above captioned action is transferred to the United States District Court for the Eastern District of Virginia.

William H. Yohn, Jr., J.

